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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/061,343	02/04/2002	Bernadette M. Gibbs	53394.000605	4731

7590 05/19/2004
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1900 K Street, N.W.
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EXAMINER

ANDERSON, CATHARINE L

ART UNIT PAPER NUMBER

3761

DATE MAILED: 05/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/061,343

Applicant(s)

GIBBS, BERNADETTE M.

Examiner

C. Lynne Anderson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-46 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-46 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 19, 20, and 41 are rejected under 35 U.S.C. 102(e) as being anticipated by Hisada et al. (5,851,205).

Hisada discloses a fastener tab 10 for use on an absorbent garment 1, as shown in figure 1. The absorbent garment 1 comprises a chassis 3 and an absorbent core 4. The fastener tab 10 comprises a tab body 20, as shown in figure 2, having a proximal edge 20C, a distal edge 20D, and a top edge 20A, and a bottom edge 20B. The fastener tab 10 further comprises a fastening area 21, as shown in figure 5, having a first edge, wherein a first tangent line tangent to a first portion of the first edge intersects a second tangent line tangent to a second portion of the first edge. The first and second tangent lines are not parallel to the primary pull direction, the top edge, or the bottom edge of the fastener tab 10, as shown in figure 5.

Claims 42-45 are rejected under 35 U.S.C. 102(e) as being anticipated by Shimoe et al. (6,454,753).

Shimoe discloses an absorbent garment 1, as shown in figure 1, comprising a main body having a longitudinal and a cross direction. The garment 1 further comprises a pair of fastener tabs 21 that are stretchable in the cross direction, as disclosed in column 2, lines 61-64. The fastener tabs 21 are attached to the main body, as shown in figure 2, and have a proximal end 26, a distal end 27, top and bottom edges 31 and 32, and a width defined there between. The fastener tabs 21 has a deadened zone 23, as shown in figure 2, comprising a non-stretchable material, the deadened zone 23 created by a segment of hook and loop material attached to the fastener tabs 21, as disclosed in column 2, lines 65-66. The hook and loop material extends across the width of the tab 21 non-linearly, but at least a portion of the hook and loop material extends linearly, as shown in figure 2.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-18 and 21-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hisada et al. (5,851,205) in view of Gesp (5,507,097).

With respect to claims 1 and 21, Hisada discloses all aspects of the claimed invention with the exception of a portion of the tab body 20 being elastic. Gesp teaches the use of an elastic material as fastener tabs for diapers in order to provide the wearer of the diaper with improved comfort, as described in column 1, lines 10-14. It would

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therefore be obvious to one of ordinary skill in the art at the time of invention to make the fastener tab of Hisada elastic, as taught by Gesp, to provide the wearer of the diaper with improved comfort.

With respect to claims 3-8 and 22-27, Hisada shows in figure 5 fastening area 21. The fastening area 21 has a first edge, closest to the distal edge 20D of the tab, having a first portion, comprising the top half of the fastening area, which is curved. The curved first portion is at one point concave toward the proximal edge 20C and at a second point convex toward the proximal edge 20C. The first edge of the fastening area 21 also has a second portion, comprising the bottom half of the fastening area, which is curved. The curved second portion is at one point concave toward the proximal edge 20C and at a second point convex toward the proximal edge 20C.

With respect to claims 9-11 and 28-30, the first portion or second portion of the first edge may be defined to consist of the flat part of the edge closest to the distal edge 20D, as shown in figure 5, which is straight.

With respect to claims 12-13 and 31-32, the fastening area 21 has a second edge, farthest from the distal edge 20D, as shown in figure 5. The second edge has a first portion, comprising the bottom half of the fastening area, and a second portion, comprising the top half of the fastening area, such that the first portions of the first and second edges are parallel and the second portions of the first and second edges are parallel.

With respect to claims 14-15 and 33-34, the first and second portions of the first edge are curved, as shown in figure 5.

With respect to claims 16-18 and 35-37, the first portion or second portion of the first edge may be defined to consist of the flat part of the edge closes the distal edge 20D, as shown in figure 5, which is straight.

With respect to claims 38-40, it would have been an obvious matter of design choice to make the first edge stop short of the top and bottom edges of the tab body, since the applicant has not disclosed that this configuration serves any particular purpose or solves any stated problem, and it appears the invention would function equally well with the first edge meeting or stopping short of the top and bottom edges of the tab body.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Lynne Anderson whose telephone number is (703) 306-5716. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on (703) 305-1025. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.


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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

CA

cla

May 13, 2004


JOHN A. CALVERT
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